

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4       IN RE: NATIONAL COLLEGIATE  
5       ATHLETIC ASSOCIATION ATHLETIC  
6       GRANT-IN-AID CAP ANTITRUST  
7       LITIGATION

Case Nos. 14-md-02541-CW  
            14-cv-02758-CW

8       THIS DOCUMENT RELATES TO:  
9       ALL ACTIONS

ORDER GRANTING IN PART AND  
DENYING IN PART MOTIONS TO  
SEAL

(Dkt. Nos. 654, 655, 702,  
713, 749)

10           Now pending are five administrative motions for leave to  
11   file under seal various documents and information submitted in  
12   connection with the motions for summary judgment and to exclude  
13   proposed expert testimony. The parties and non-parties that  
14   designated the information as confidential ("designating  
15   parties") have filed, in the public record, declarations in  
16   support of the motions to seal. See Civil L.R. 79-5(e), (e)(1).  
17   For the following reasons, the Court grants in part and denies in  
18   part the motions for leave to file under seal.

19           A party seeking to file documents under seal must establish  
20   that the documents, "or portions thereof, are privileged,  
21   protectable as a trade secret or otherwise entitled to protection  
22   under the law" and must narrowly tailor the request "to seek  
23   sealing only of sealable material." Civil L.R. 79-5(b). In  
24   considering sealing requests, "a strong presumption in favor of  
25   access is the starting point." Kamakana v. City & Cty. of  
26   Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)(internal quotation  
27   marks omitted). Parties seeking to seal documents relating to  
28   dispositive motions bear the burden of articulating "compelling

1 reasons supported by specific factual findings that outweigh the  
2 general history of access and the public policies favoring  
3 disclosure, such as the public interest in understanding the  
4 judicial process." Id. at 1178-79 (internal quotation marks and  
5 citations omitted). "What constitutes a compelling reason is  
6 best left to the sound discretion of the trial court." Ctr. for  
7 Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1097 (9th Cir.  
8 2016) (internal quotation marks and citations omitted). The  
9 Court "must conscientiously balance the competing interests of  
10 the public and the party who seeks to keep certain judicial  
11 records secret." Kamekana, 447 F.3d at 1179 (internal quotation  
12 marks and alterations omitted). "The mere fact that the  
13 production of records may lead to a litigant's embarrassment,  
14 incrimination, or exposure to further litigation will not,  
15 without more, compel the court to seal its records." Id. Nor  
16 will the moving party's reference to a "stipulation or protective  
17 order that allows a party to designate certain documents as  
18 confidential." Civil L.R. 79-5(d)(1)(A).

19 In general, the parties and nonparties seeking to maintain  
20 documents under seal in connection with the filed motions have  
21 shown compelling reasons to seal some of the terms of media  
22 agreements and other confidential contracts and financial  
23 information. Additionally, much of this information is only  
24 tangentially relevant to the dispositive motions. There are,  
25 however, a few exceptions. Accordingly, the Court rules as  
26 follows.

27 1. The designating parties did not file declarations in  
28 support of sealing all material originally included in the

1 motions to seal (and redacted from public filings) by the moving  
2 parties. The Court denies the motions to seal with respect to  
3 all information for which no declaration in support of sealing  
4 was provided.

5 2. In some declarations and briefs in support of sealing,  
6 the designating parties publicly identified the existence of a  
7 contract, the name of the contract, or the parties to the  
8 contract. Where information has been publicly disclosed, the  
9 Court denies leave to seal that public information, although the  
10 portions of the contracts that remain confidential may be filed  
11 under seal.

12 3. Defendant The Big 12 Conference, Inc., seeks to  
13 maintain under seal one portion of the deposition testimony of  
14 Gregory L. Fenves that does not contain any confidential  
15 information. See Fenves Depo. at 38:21-39:1; Pls. Opp. to Defs.  
16 MSJ, at 37:24-28 (quoting same); Kessler Decl. in Opp. to Defs.  
17 MSJ ¶ 8 (referring to same). The Court denies the motion to seal  
18 this information. The Court likewise denies the motion to seal  
19 the Bates Number of a document produced by The Big 12 that is  
20 referred to in Plaintiffs' opposition brief. Pls. Opp. to Defs.  
21 MSJ, at 24:16-17. The Court grants the motion to seal the  
22 remainder of the information that The Big 12 seeks to maintain  
23 under seal, for which it has shown compelling reasons.

24 4. The Court grants the remainder of all pending motions  
25 to seal. The Court does not rule at this time on whether any of  
26 the sealed materials may remain under seal if introduced at  
27 trial.

28 5. Within seven days after the filing of this order, the

1 moving parties shall file the following versions of all documents  
2 for which any portion of the motion to seal was denied:

3 (1) public copies redacting only the material for which the  
4 designating party filed a declaration in support of sealing and  
5 this Court granted the motion to file under seal; and (2) revised  
6 sealed copies, with highlighting showing the revised redactions.  
7 The moving parties need not re-file documents for which the scope  
8 of the material filed under seal has not changed from that  
9 requested in the motion for leave to file under seal.

10 For the foregoing reasons, the Court grants in part and  
11 denies in part the motions for leave to file under seal (Docket  
12 Nos. 654, 655, 702, 713, 749).

13 IT IS SO ORDERED.

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15 Dated: March 30, 2018



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CLAUDIA WILKEN  
United States District Judge